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SERVICE DATE – AUGUST 24, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35063

MICHIGAN CENTRAL RAILWAY, LLC
– ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY

Decided: August 20, 2007

AGENCY: Surface Transportation Board.

ACTION: Notice of revised procedural schedule.

SUMMARY: By this decision and notice, the Board is revising its previously established schedule for considering the petition of Michigan Central Railway, LLC (MCR) to exempt its acquisition and operation of certain railroad lines of the Norfolk Southern Railway Company (NSR) in Michigan and Indiana, so as to allow 2 more weeks for the submission of comments. The agency is also denying requests to have this proceeding considered under the formal application process of 49 U.S.C. 10901 and 49 CFR Part 1150, rather than under the exemption provisions of 49 U.S.C. 10502(b) and 49 CFR 1121.1.

DATES: Comments on MCR's petition for exemption may now be filed by any interested person by September 18, 2007. Replies by MCR and NSR are now due by October 1, 2007. The Board will issue its final decision by October 25, 2007.

ADDRESSES: Any filing submitted in this proceeding must refer to STB Finance Docket No. 35063 and may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing must attach a document and otherwise comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format must submit an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to: Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005; and G. Paul Moates, Sidley & Austin LLP, 1501 K Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0395. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: By decision and notice served on August 2, 2007, and published on the same date in the Federal Register at 72 FR 42465-66, we commenced a proceeding under 49 U.S.C. 10502(b) and 49 CFR 1121.1 to consider MCR's petition for an exemption to authorize it to acquire some 299 miles of rail line from NSR in Michigan and Indiana, to acquire through assignment from NSR some 85.5 miles of existing trackage rights and lease rights, and to acquire yards and stations that are related to this track. In that decision and notice, we also adopted a procedural schedule providing that: comments on MCR's petition from interested persons were due by September 4, 2007; replies from MCR and NSR were due by September 17, 2007; and a final decision would be issued on October 11, 2007.

Various parties have requested that the schedule be extended to allow more time for them to prepare comments. In its petition for reconsideration of the procedural schedule filed on August 3, 2007, the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railway Signalmen (BMWE/BRS) jointly request an extension to October 2, 2007, for filing initial comments, to October 22, 2007, for replies and to December 1, 2007, for issuing a decision.¹ In their reply jointly filed on August 7, 2007, the Michigan Southern Railroad Company and the Elkhart & Western Railroad Company (MSR/EWR) support the extension requested by BMWE/BRS. In a pleading filed on August 3, 2007, Michigan State Senator Mark S. Schauer requested an extension but did not propose specific dates. The longest extension request, seeking a 90 day extension to the comment due date, was filed on August 1, 2007, by the Southwest Michigan Council of Governments.

Replies in opposition to the requests for extension were filed by MCR on August 6, 2007, and August 7, 2007, and by NSR on August 8, 2007.

We will allow the parties an additional 2 weeks for the submission of comments. Due to the scope of the proposed transaction and the fact that opponents must develop their submissions during the summer when many people schedule vacations, an additional 2 weeks for the submission of comments is warranted. The additional 2 weeks will provide sufficient time for interested persons to prepare their comments, while not materially harming the parties to this transaction. We will also extend the remaining due dates under the procedural schedule by 2 weeks.

In a pleading filed on July 31, 2007, the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), asked the Board to require MCR and NSR to use the formal application process under 49 U.S.C. 10901 and 49 CFR Part 1150 for considering the proposed transaction, rather than the exemption process of 49 U.S.C. 10502(b) and 49 CFR 1121.1.² BLET argues that the exemption process

¹ BMWE/BRS essentially made the same request in its response filed on August 1, 2007, to MCR's petition.

² In a pleading filed on July 20, 2007, MSR/EWR also seem to support this request.

does not give parties “adequate opportunity to examine the transactions and to engage in needed discovery.”

We will not require MCR and NSR to proceed by filing a formal application at this time. BLET and those in support of its position have failed to date to show that the exemption process and the procedural schedule we have adopted are inadequate. Contrary to what BLET maintains, opponents of the transaction will have ample opportunity to develop the record. The parties to this transaction have submitted comprehensive information about the transaction, and we are allowing additional time for opponents to examine the transaction and to file comments. At this time, we conclude that we have established a fair and responsive process.

Board decisions, notices, and filings are available on its website at www.stb.dot.gov.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The schedule for hearing MCR’s petition is extended as provided in this decision, and the requests to hear this transaction under the application process are denied.
2. This decision will be published in the Federal Register on August 24, 2007.
3. This decision is effective on August 24, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon Williams
Secretary